trade, profession or business wherever carried on and then deducting the permissible outgoings and expenses. For that procedure section 29 provides when it says "for the purposes of section 28 the amount of any loss incurred by a person chargeable to tax under this Part, shall be computed in like manner as assessable profits are computed".

From section 28 there is no exception. It applies in every case where a loss is incurred in the basis period for any year of assessment by a person (which by definition includes a corporation — section 2(1)) chargeable to tax.

In relation to the case of these appellants, a computation under section 22 assisted by section 43 in the manner indicated showed an overall loss on certain of the tax years: thus section 28 operated in relation to those years.

The crucial words of section 28 as far as the present appeal is concerned are "the amount of such loss attributable to activities in Sarawak and shall be set off, etc." The legislature has made it abundantly clear that it does not propose to allow the deduction of the whole of the loss — i.e. in the instant case, the whole of the overall loss. Only some of that loss is to be set off, and be capable of being carried forward. That position is described in what to their Lordships is unambiguous language. What may be deducted or set off is that part of the overall loss which is "attributable to activities in Sarawak". That the appellants have activities in Sarawak and as well activities beyond Sarawak is beyond question. That it is possible to determine albeit in some circumstances with difficulty and perhaps only by approximation the financial result of those activities can scarcely be denied. Indeed, the parties have done so in the agreed figures. The result of applying the Ordinance in this case is that only those amounts may be set off which have been designated by the parties in those agreed figures as losses in Sarawak.

The appellants contended that the control and management of the appellants' business in Sarawak was relevantly an activity in Sarawak. Their Lordships, like the court below, are unable to agree with this contention. The operation of section 43 is fully reflected in the computation under section 22 of the profit or of the loss as the case may be. Section 43 cannot be made to do double service either by creating an exception to section 28, which clearly it does not, or by denying any effect to the limitation contained in section 28 as to the portion of an overall loss which may be carried forward.

Their Lordships are of opinion that the assessments made on the appellants were rightly made.

Their Lordships will accordingly report to the Head of Malaysia their opinion that this appeal should be dismissed and that the appellants should pay the respondent's costs of this appeal.

Appeal dismissed.

Solicitors: *Coward, Chance & Co.; Stephenson Harwood & Tatham.*

PUBLIC PROSECUTOR v. LEE HONG KEE

[A.Cr.J. (Chang Min Tat J.) October 3, 1968]
[Ipoh — Criminal Appeal No. 37 of 1968]

Road Traffic — Permitting car to be used by unlicensed driver — User without valid insurance policy — Charge — Road Traffic Ordinance, 1958, ss. 25(2), 138(2), 146.

Criminal Law and Procedure — Charge — Wrong section — Where no miscarriage of justice — Amendment.

Road Traffic — Disqualification — Special reasons — Enhancing period of disqualification — Road Traffic Ordinance, 1958, s. 74(2).

The respondent was teaching his wife to drive. She held no licence competent or provisional. He was charged and convicted on an offence of permitting his car to be used by an unlicensed driver under section 138(2) of the Road Traffic Ordinance and further of such user without a valid policy of insurance in respect of third party risks and was fined $20 on the first charge and $90 on the second and was ordered to be disqualified from driving for 6 months.

On appeal by the Deputy Public Prosecutor,

Held, allowing the appeal: (1) the charge as framed while technically incorrect did specify the offence of permitting the user on the public road by an unlicensed driver and it was clear that in no instance was the respondent ever misled. Therefore no miscarriage of justice had resulted, and the charge could accordingly be amended to bring it under section 25(2) and punishable under section 146 of the Ordinance;

(2) the law in section 74(2) of the Ordinance lays down a statutory minimum period of disqualification of 12 months and with powers to the trial magistrate to increase that period. If there are special reasons he could consider them and in a proper case order reduction of the period to less than 12 months, but he must state what the special reasons he found were. In this case it was clearly the duty of the magistrate to apply the law as enacted by the legislature. The period of disqualification of 6 months should therefore be set aside and a period of 12 months substituted.

Per Curiam: "It occurs to me that I have spent a lot of my time in criminal appeals amending the charges of lower courts and I would therefore exhort the learned Deputy Public Prosecutor to ensure that his prosecuting officers would frame the correct charges and if they were in any doubt as to so doing to offer his assistance to such prosecuting officers".

Cases referred to:—

(1) *Public Prosecutor* v. *M. Karthiah* [1953] M.L.J. 52.

(2) *Re Kanapathipillai & Ors.* [1960] M.L.J. 243.

(3) *Public Prosecutor* v. *Hussin* [1960] M.L.J. 90.

(4) *Re Chan Eow Beng* [1961] M.L.J. 181.

(5) *R.* v. *Surrey Quarter Sessions; Ex parte Commissioner of Metropolitan Police* [1962] 2 W.L.R. 1203.

MAGISTRATE'S CRIMINAL APPEAL.

M. Mahalingam (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Chang Min Tat J. (delivering oral judgment): The accused was charged and convicted on an offence of permitting his car to be used by an unlicensed driver under section 138 (2) of the Road Traffic Ordinance and further of such user without a valid policy of insurance in respect of third party risks and was fined $20 on the first charge and $30 on the second charge and he was ordered to be disqualified from driving for 6 months only.

The first charge was framed under the wrong section. It occurs to me that I have spent a lot of my time in criminal appeals amending the charges of lower courts and I would therefore exhort the learned Deputy Public Prosecutor to ensure that his prosecuting officers would frame the correct charges and if they were in any doubt as to so doing to offer his assistance to such prosecuting officers. The charge for permitting another person to drive a motor-car without being the holder of a valid driving licence is an offence under section 25 (2) of the Road Traffic Ordinance and is punishable under section 146 of the Road Traffic Ordinance.

The charge as framed while technically incorrect did however specify the offence of permitting the user on the public road by an unlicensed driver and it is quite clear that in no instance was the respondent ever misled. I am therefore of the opinion that no miscarriage of justice had resulted and I therefore amend the charge to bring it under section 25 (2) and punishable under section 146.

For the disqualification of 6 months, the learned magistrate had not recorded in his grounds of judgment any special reasons or any reasons whatsoever why he should order a disqualification for a lesser period than the statutory minimum of 12 months. He was however aware of his duty because he clearly stated that he ordered disqualification for 6 months only. The circumstances of the offence were these. The respondent was teaching his wife who was not a holder of any licence, competent or provisional. In these circumstances there can be no special reasons which are relevant to the offence and not to the offender, as has been decided in a number of cases: *Public Prosecutor* v. *M. Karthiah,*[1] *Re Kanapathipillai & Ors.,*[2] *Public Prosecutor* v. *Hussin.*[3] In *Re Chan Eow Beng,*[4] it was held that it was immaterial if the effect of the disqualification was necessarily and consequently to deprive the defendant of his livelihood. Further in the case of *Regina* v. *Surrey Quarter Sessions; Ex parte Commissioner of Metropolitan Police,*[5] disqualification is held not to be a sentence.

The law in section 74(2) of the Road Traffic Ordinance clearly lays down a statutory minimum period of disqualification of 12 months and with powers to the trial magistrate to increase that period. However if there are special reasons he could consider them and in a proper case order reduction of the period to less than 12 months but he must state what the special reasons he found were. In this case it is obvious that the learned trial magistrate had some sympathy for the accused. With respect the sympathy is misplaced, and it is clearly the duty of the magistrate, as it is mine, to apply the law as enacted by the legislature.

The appeal is allowed, the period of disqualification of 6 months set aside and a period of 12 months substituted.

Appeal allowed.

BALAKRISHNAN v. DEPUTY PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) November 6, 1968]
[K.L. — Criminal Appeal No. 1 of 1968]

Bribery and Corruption — Onus of proof — Presumption — Burden of proof — Sentence — Special circumstances — Prevention of Corruption Act, 1961, ss. 4(a) & 14.

Criminal Law and Procedure — Sentence — Exceptional circumstances — Reduction.

This was an appeal against the conviction and sentence of the appellant under section 4(a) of the Prevention of Corruption Act, 1961. The prosecution in this case proved that the appellant received $5 from the complainant. The president of the sessions court convicted the appellant as he did not accept the appellant's story that the money had been planted on him.

Held, dismissing the appeal: (1) in a charge under the Prevention of Corruption Act, 1961 once the prosecution has proved that money has been given or received by an agent and employee of the Government the burden of proof shifts to the accused to rebut the presumption under section 14 of the Act that the money was obtained corruptly or as an inducement or reward for doing an act in relation to the principal's affairs. The burden is, however, not so great as that placed on the prosecution. All that the accused has to do is to show that his defence is probably true;

(2) in this case the learned president was correct in rejecting the defence of the appellant and the conviction must therefore be confirmed;

(3) in the exceptional circumstances of this case, as the charge had been hanging over the appellant's